

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

OSCAR GAY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. CV-2010-00116
	)	
WELLS FARGO BANK, N.A. and	)	
EQUIFAX INFORMATION SERVICES, LLC	)	
	)	
Defendants.	)	

**DEFENDANT WELLS FARGO BANK’S ANSWER TO COMPLAINT**

Defendant Wells Fargo Bank, N.A. (“Wells Fargo”), hereby submits its Answer to Plaintiff Oscar Gay's (“Plaintiff”) Complaint:

**JURISDICTION**

Wells Fargo admits this Court has jurisdiction over Plaintiff's claims. Wells Fargo affirmatively asserts, however, that Plaintiff's state law claims are preempted by the Fair Credit Reporting Act. Wells Fargo denies that Plaintiff is entitled to any relief he seeks.

**PRELIMINARY STATEMENT**

Wells Fargo denies the allegations contained in Plaintiff's preliminary statement.

## **PARTIES**

1. Wells Fargo lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

2. Wells Fargo Bank, N.A. is a national association that is chartered under the laws of South Dakota with offices in San Francisco. Wells Fargo admits it conducts business in the State of Alabama. Wells Fargo denies the remaining allegations contained in this paragraph.

3. Wells Fargo lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

## **BACKGROUND FACTS**

4. Wells Fargo lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

5. Wells Fargo lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

6. Wells Fargo lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

7. Wells Fargo lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

8. Wells Fargo lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

9. Wells Fargo lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

10. Denied.

**COUNT ONE**

**FCRA VIOLATIONS BY WELLS FARGO**

11. Wells Fargo adopts and incorporates all previous paragraphs as if specifically stated herein.

12. Denied.

13. Wells Fargo admits that it furnishes information to various credit reporting agencies. Wells Fargo lacks knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in this paragraph.

14. Denied.

15. Wells Fargo lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

16. Denied.

17. Denied.

18. Denied, including denial of subparts.

19. Denied.

20. Denied.

21. Denied.

Wells Fargo denies Plaintiff is entitled to the relief requested in the addendum clause to Count One of Plaintiff's Complaint, or to any relief whatsoever.

**COUNT TWO – NEGLIGENCE**

22. Wells Fargo adopts and incorporates all previous paragraphs as if specifically stated herein.

23. Denied.

24. Denied.

25. Wells Fargo lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

Wells Fargo denies Plaintiff is entitled to the relief requested in the addendum clause to Count Two of Plaintiff's Complaint, or to any relief whatsoever.

**COUNT THREE – WANTONNESS**

26. Wells Fargo adopts and incorporates all previous paragraphs as if specifically stated herein.

27. Denied.

28. Wells Fargo lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

Wells Fargo denies Plaintiff is entitled to the relief requested in the addendum clause to Count Three of Plaintiff's Complaint, or to any relief whatsoever.

**COUNT FOUR – FCRA VIOLATIONS BY EQUIFAX**

29. Wells Fargo adopts and incorporates all previous paragraphs as if specifically stated herein.

30. This paragraph contains allegations which are not against Wells Fargo and no response by Wells Fargo is required.

31. This paragraph contains allegations which are not against Wells Fargo and no response by Wells Fargo is required.

32. This paragraph contains allegations which are not against Wells Fargo and no response by Wells Fargo is required.

33. This paragraph contains allegations which are not against Wells Fargo and no response by Wells Fargo is required.

34. This paragraph contains allegations which are not against Wells Fargo and no response by Wells Fargo is required.

35. This paragraph contains allegations which are not against Wells Fargo and no response by Wells Fargo is required.

36. This paragraph contains allegations which are not against Wells Fargo and no response by Wells Fargo is required.

37. This paragraph contains allegations which are not against Wells Fargo and no response by Wells Fargo is required.

38. This paragraph contains allegations which are not against Wells Fargo and no response by Wells Fargo is required.

### **AFFIRMATIVE DEFENSES**

#### **FIRST DEFENSE**

Plaintiff failed to mitigate his damages.

#### **SECOND DEFENSE**

Plaintiff's alleged damages are due, in whole or in part, to persons or entities other than Wells Fargo.

#### **THIRD DEFENSE**

Wells Fargo pleads that the Plaintiff assumed the risk and/or was contributorily negligent.

#### **FOURTH DEFENSE**

Plaintiff's claims are due to be dismissed because he has failed to join necessary parties.

#### **FIFTH DEFENSE**

Wells Fargo pleads the doctrines of estoppel, laches, and/or waiver.

#### **SIXTH DEFENSE**

Wells Fargo pleads the doctrines of ratification and unclean hands.

**SEVENTH DEFENSE**

Wells Fargo adopted reasonable procedures and acted in accordance with those procedures, and acted in good faith at all times toward Plaintiff.

**EIGHTH DEFENSE**

Wells Fargo pleads that any award of punitive damages in this case is subject to those limitations set forth in Alabama Code Sections 6-11-20, 6-11-21, and 6-11-27.

**NINTH DEFENSE**

Wells Fargo asserts that any award of punitive damages would violate the Due Process and Equal Protection Clauses of the Fifth, Eighth and Fourteenth Amendments to the United States Constitution.

**TENTH DEFENSE**

An award of punitive damages in this case would violate Article I, Sections 1, 6, 9, 12 and 15 of the Constitution of Alabama of 1901.

**ELEVENTH DEFENSE**

Plaintiff's common law claims are preempted by the Fair Credit Reporting Act (FCRA).

**TWELFTH DEFENSE**

Wells Fargo pleads all affirmative defenses as set forth in the FCRA.

**THIRTEENTH DEFENSE**

Some or all of Plaintiff's allegations fail to state a claim upon which relief may be granted.

**FOURTEENTH DEFENSE**

Plaintiff's claims are barred by qualified immunity under FCRA.

**FIFTEENTH DEFENSE**

Plaintiff has no private right of action against Wells Fargo under the FCRA.

**SIXTEENTH DEFENSE**

At all times, Wells Fargo maintained reasonable procedures to ensure maximum accuracy of its submissions of information to consumer reporting agencies.

**SEVENTEENTH DEFENSE**

Wells Fargo's supplying of information, if any, was true, privileged, and/or justified.

**EIGHTEENTH DEFENSE**

Plaintiff's damages were either caused by her, or persons acting on her behalf, negligence, in whole or in part, or by other intervening or supervening causes which were beyond Wells Fargo's control and responsibility.

**TWENTIETH DEFENSE**

Plaintiff is not entitled to equitable or injunctive relief under FCRA § 1681.



**TWENTY-FIRST DEFENSE**

Wells Fargo reserves the right to amend or supplement these affirmative defenses based upon discovery of new or additional information.

s/D. Keith Andress

D. KEITH ANDRESS

NATALIE R. BOLLING

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N.A.

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**CERTIFICATE OF SERVICE**

I hereby certify that on Monday, April 12, 2010, I have electronically filed the foregoing document with the Clerk of Court using the court's CM/ECF system. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by U.S. First Class mail, properly addressed and postage prepaid. Parties may access this filing through the Court's electronic filing system:

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s/D. Keith Andress  
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Of Counsel